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Paper No. 5

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JUL 29 2002

OFFICE OF PETITIONS

In re Application of
Kele
Application No. 10/026,626
Filed: December 27, 2001
Atty. Dkt. No.: A-7739.CIP
For: METHOD AND APPARATUS FOR
LIFTING CRYPT LIDS

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: DECISION DISMISSING
: PETITION UNDER 37 CFR
: 1.47(b)
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:

This is in response to the petition under 37 CFR 1.47(b), filed February 1, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed December 27, 2001 without an executed oath or declaration and naming Gavin William Kele as sole inventor.

Accordingly, on January 24, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and surcharge.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

The petition fails to satisfy items (2), (3), (4), (5) and (6) set forth above.

As to item (2), the declaration submitted with the instant petition is unacceptable as it fails to comply with the provisions of 37 CFR 1.63 or 37 CFR 1.64. Please note that in a petition under 37 CFR 1.47(b) where no inventor is available to execute the declaration, the declaration should be executed by a

corporate officer, such as the president, vice president, secretary, or treasurer of the assignee on behalf of and as agent for the non-signing inventor. The corporate officer's title or position must be identified in the declaration. If an officer is unavailable to execute the declaration, the declaration may be signed on behalf of the corporation by one whose proof of signing authority has been submitted to the Office, such as the corporation's attorney. Petitioner's attention is directed to MPEP 409.03(b) for further guidance.

As to item (3), the required petition fee of \$130.00 has been charged to deposit account No. 08-2455 as authorized in the instant petition.

As to item (4), the petition fails to set forth the last known address of the inventor. The Office is construing the last known address of the non-signing inventor to be that which is listed on the unexecuted declaration submitted herewith. If in fact the last known address of the non-signing inventor is other than that which is listed on the unexecuted declaration, petitioner is required to provide the Office with the correct last known address of the non-signing inventor.

As to item (5), petitioner has presented no evidence of proprietary interest in the above-referenced application. Petitioner must establish that the invention has been assigned to applicant, that the inventor has agreed in writing to assign the invention to applicant, or that applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application. Petitioner must submit a copy of an employment agreement between the inventor and applicant or a legal memorandum signed by an attorney familiar with the law of the relevant jurisdiction stating that a court of competent jurisdiction would by weight of authority in that jurisdiction award title of the invention to Rule 47 applicant.

As to item (6), the petition does not give any indication that status under Rule 47 is necessary to preserve the rights of any particular party or to prevent irreparable damages to any particular party.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

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Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

A handwritten signature in cursive script, appearing to read "Alesia M. Brown".

Alesia M. Brown
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy